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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,000	07/09/2003	Earl Littman	1656.002	1040
9809 7590 10/01/2007 KEELING PATENTS AND TRADEMARKS 3310 KATY FREEWAY, SUITE 100 HOUSTON, TX 77007			EXAMINER LAstra, DANIEL	
			ART UNIT 3622	PAPER NUMBER
			MAIL DATE 10/01/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/616,000	Applicant(s) LITTMAN ET AL.	
	Examiner DANIEL LASTRA	Art Unit 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____  |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date  
:02/17/2005;02/08/2005;07/01/2004;07/28/2003.

### DETAILED ACTION

1. Claims 1-47 have been examined. Application 10/616,000 (METHOD AND SYSTEM OF ADVERTISING) has a filing date 07/09/2003 Claims Priority from Provisional Application 60429225 (11/26/2002).

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 7-10, 18, 24, 25, 28, 36 and 37 are rejected under 35 U.S.C. 102(e) as being anticipated by Klayh (US 2003/0103644).

Claim 1, Klayh teaches:

A method comprising:

sensing presence of a consumer proximate to a display of consumer goods (see paragraph 19);

invoking, based on the presence of the consumer, an advertisement selected from a group of previously supplied advertisements, the advertisements directed to at least one sense of the consumer (see paragraph 14); and

reporting statistics of invocation of advertisements (see paragraph 14).

Claim 7, Klayh teaches:

The method as defined in claim 1 wherein invoking an advertisement directed to at least one sense of the consumer further comprises invoking an advertisement directed to at least one sense selected from the group: visual, audio and olfactory (see paragraph 184).

Claim 8, Klayh teaches:

The method as defined in claim 1 wherein invoking an advertisement further comprises playing a video clip (see paragraph 184).

Claim 9, Klayh teaches:

The method as defined in claim 8 wherein invoking an advertisement further comprises playing a video clip with audio (see paragraph 184).

Claim 10, Klayh teaches:

The method as defined in claim 1 wherein invoking an advertisement further comprises playing an audio clip (see paragraph 184).

Claim 18, Klayh teaches:

An advertising system comprising:

a first computer system (see figure 1);

a remote advertising player coupled to the first computer system by way of a communication system (see figure 1); and

wherein the remote advertising player senses presence of a person, and plays an advertisement stored in the remote advertising player previously supplied by the first computer system, and wherein the remote advertising system reports a metric of advertising play to the first computer system (see paragraphs 14 and 19).

Claim 24, Klayh teaches:

The system as defined in claim 18 further comprising a second computer system coupling the first computer system and the remote advertising player, and wherein the second computer system facilitates communications between the first computer system and the advertising player (see figure 1).

Claim 25, Klayh teaches:

The system as defined in claim 24 wherein the second computer system couples to the first computer system by way of an Internet connection (see paragraph 3).

Claim 28, Klayh teaches:

The system as defined in claim 18 further comprising a sensing device coupled to the advertising player, and wherein the advertising player plays advertisements when the sensing device detects presence of a person (see paragraph 19).

Claim 36, Klayh teaches:

The system as defined in claim 18 further comprising a third computer system coupled to the first computer system, the third computer system used to create advertisements (see figure 1).

Claim 37, Klayh teaches:

The system as defined in claim 18 wherein the advertising player provides information to a person about products proximate to the advertising player (see paragraph 19).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-6, 11-17, 19-23, 26, 27, 29-35 and 38-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klayh (US 2003/0103644).

Claim 2, Klayh fails to teach:

wherein sensing the presence of the consumer further comprises ultrasonically detecting the presence of the consumer. However, Official Notice is taken that it is old and well known to detect the presence of a person using ultrasonic devices. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Klayh would detect the presence of a person adjacent a display using ultrasonic devices, as it is old and well known to do so.

Claim 3, Klayh fails to teach:

wherein sensing the presence of the consumer further comprises detecting changes in an electric field caused by presence of the consumer. However, Official Notice is taken that it is old and well known to detect the presence of a person using changes in electric field. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Klayh would detect the presence of a person adjacent a display using electric fields, as it is old and well known to do so.

Claim 4, Klayh fails to teach:

wherein sensing the presence of the consumer further comprises optically detecting the presence of the consumer. However, Official Notice is taken that it is old and well known to optically detect the presence of a person. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Klayh would optically detect the presence of a person adjacent a display, as it is old and well known to do so.

Claim 5, Klayh fails to teach:

wherein optically detecting further comprises detecting using a laser system. However, Official Notice is taken that it is old and well known to optically detect the presence of a person using a laser system. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Klayh would optically detect the presence of a person adjacent a display using a laser system, as it is old and well known to do so.

Claim 6, Klayh fails to teach:

wherein sensing the presence of the consumer further comprises detecting a radio frequency identification device carried by the consumer. However, Official Notice is taken that it is old and well known to detect the presence of a person using radio frequency identification carried by the person. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Klayh would detect the presence of a person adjacent a display using radio frequency identification, as it is old and well known to do so.

Claim 11, Klayh fails to teach:

wherein invoking an advertisement further comprises releasing a chemical to be detected by the consumer's sense of smell. However, Official Notice is taken that it is old and well known to release chemical to be detected by a consumer's sense of smell. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Klayh would detect the presence of a person adjacent a display and would release chemicals upon said detection, as it is old and well known to do so.

Claim 12, Klayh fails to teach:

further comprising detecting removal of a consumer good from the display of consumer goods. However, Official Notice is taken that it is old and well known to detect the removal of consumer good from the display of consumer good. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Klayh would detect the presence of a person adjacent a display and would detect the removal of consumer good from the display of consumer good, as it is old and well known to do so.

Claim 13, Klayh fails to teach:

wherein detecting removal of a consumer good from the display of consumer goods further comprises reading a radio frequency tag embedded in the consumer good as the tag passes through a reading beam. However, Official Notice is taken that it is old and well known to read a radio frequency tag embedded in the consumer good as the tag passes through a reading beam. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Klayh would

read a radio frequency tag embedded in the consumer good as the tag passes through a reading beam, as it is old and well known to do so.

Claim 14, Klayh fails to teach:

wherein the display of consumer goods is a product display having a door, and wherein sensing presence of the consumer further comprises sensing opening of the door. However, Official Notice is taken that it is old and well known to detect the presence of a person when said person opens a door. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Klayh would detect the presence of a person when said person opens a door, as it is old and well known to do so.

Claim 15, Klayh fails to teach:

wherein sensing opening of the door further comprises ultrasonically detecting opening of the door. However, Official Notice is taken that it is old and well known to ultrasonically detect the opening of a door. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Klayh would detect the presence of a person when said person opens a door and to ultrasonically detect the opening of said door, as it is old and well known to do so.

Claim 16, Klayh teaches:

The method as defined in claim 14 wherein invoking an advertisement directed to at least one sense of the consumer further comprises invoking an advertisement directed to at least one sense selected from the group: visual, audio and olfactory (see paragraph 184).

Claim 17, Klayh fails to teach:

wherein the product display having a door is a freezer. However, Official Notice is taken that it is old and well known that some goods are stored in freezers. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Klayh would detect the presence of a person when said person opens a door and that said door would belong to a freezer, as it is old and well known to do so.

Claim 19, Klayh fails to teach:

wherein the communication system comprises, at least in part, a wireless communication system. However, the same rejection applied to claim 6 is also applied to claim 19.

Claim 20, Klayh fails to teach:

wherein the remote advertising player further comprises:

a radio frequency communication circuit that may at least periodically wirelessly coupled to the first computer system;

a storage medium coupled to the radio frequency communication circuit, the storage medium storing advertisements; and

a communication device for reproducing the advertisement. However, the same argument made in claim 6 is made in claim 20.

Claim 21, Klayh teaches:

The system as defined in claim 20 wherein the communication device further comprises video display (see paragraph 184).

Claim 22, Klayh teaches:

The system as defined in claim 20 wherein the communication device further comprises an audio speaker (see paragraph 184).

Claim 23, Klayh teaches:

The system as defined in claim 22 wherein the communication device further comprises a video display (see paragraph 184).

Claim 26, Klayh fails to teach:

wherein the second computer system couples to the first computer system by way of a satellite communication system. However, Official Notice is taken that it is old and well known to communicate via satellite communication. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Klayh would use satellite communication as it is old and well known to do so.

Claim 27, Klayh fails to teach:

wherein the second computer system couples to the advertising player by way of the wireless communication system. However, the same rejection applied to claim 6 is also applied to claim 27.

Claim 29, Klayh fails to teach:

wherein the sensing device further comprises an ultrasonic sensor. However, the same argument made in claim 2 is also made in claim 29.

Claim 30, Klayh fails to teach:

wherein the ultrasonic sensor is in operational relationship to a door of a freezer. However, the same rejection applied to claim 17 is also made in claim 30.

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Claim 31, Klayh fails to teach:

wherein the sensing device further comprises an electric field sensing device adapted to detect presence of the person by changes in ambient electric field caused by the person. However, the same rejection applied to claim 3 is also made in claim 31.

Claim 32, Klayh fails to teach:

wherein the sensing device further comprises an optical sensing device. However, the same rejection applied to claim 4 is also made in claim 32.

Claim 33, Klayh fails to teach:

wherein the optical sensing device further comprises a laser based sensing device. However, the same rejection applied to claim 5 is also made in claim 33.

Claim 34, Klayh fails to teach:

wherein the sensing device further comprises a radio frequency identification tag reader, and wherein the radio frequency identification tag reader detects a person carrying a radio frequency identification tag. However, the same rejection applied to claim 13 is also made in claim 34.

Claim 35, Klayh fails to teach:

further comprising a radio frequency identification tag reader coupled to the advertising player, and wherein the advertising player detects that a person has removed an item from a group of items by scanning a radio frequency identification tag associated with the item. However, the same rejection applied to claim 13 is also applied to claim 35.

Claim 38, Klayh fails to teach:

wherein the advertising player provides nutritional information about foods proximate to the advertising player. However, Official Notice is taken that it is old and well known to provide nutritional information about products to customers. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Klayh would provide nutritional ads to persons detected near a display as it is old and well known to do so.

Claim 39, Klayh teaches:

A system comprising:

a processor (see figure 1);

a random access memory (RAM) coupled to the processor (see figure 1);

a communication device coupled to the processor (see figure 1);

a sensing device coupled to the processor (see paragraph 19); and

an advertisement reproduction device coupled to the processor (see paragraph 19);

wherein the processor is programmed to sense proximity of a consumer using the sensing device, and when a consumer is detected by the sensing device, the processor is further adapted to play an advertisement stored in the RAM on the advertisement reproduction device (see paragraph 19);

wherein the system receives advertisements and stores the advertisements in the RAM (see paragraph 19); wherein the processor is further programmed to send data to external devices, regarding statistics of advertising play (see paragraph 14). Klayh

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fails to teach that said sending is by way of the radio frequency communication device.

However, the same rejection applied to claim 6 is also made in claim 39.

Claim 40, Klayh fails to teach:

wherein the sensing device comprises at least one device selected from the group of: ultrasonic sensor, laser device, magnetic flux change sensor, and radio frequency identification tag reader. However, the same rejection made in claims 2-6 is also made in claim 40.

Claim 41, Klayh teaches:

wherein the advertisement reproduction device further comprises an audio speaker (see paragraph 184).

Claim 42, Klayh teaches:

The system as defined in claim 39 wherein the advertisement reproduction device further comprises a video display (see paragraph 184).

Claim 43, Klayh teaches:

The system as defined in claim 42 wherein the advertisement reproduction device further comprises a audio speaker (see paragraph 184).

Claim 44, Klayh fails to teach:

wherein the video display further comprises a touch screen control panel, and wherein the system is adapted to interactively provide information to the consumer. However, Official Notice is taken that it is old and well known to use touch screens. It would have been obvious to a person of ordinary skill in the art at the time the application that Klayh would use touch screen as it is old and well known to do so.

Claim 45, Klayh fails to teach:

wherein the communication device further comprises a radio frequency communication device. However, the same rejection applied to claim 6 is also made in claim 45.

Claim 46, Klayh teaches:

The system as defined in claim 39 wherein the communication device further comprises a network interface (see figure 1).

Claim 47, Klayh teaches:

A system comprising:

a means for executing programs and storing information (see figure 1);

a means for reproducing advertisements coupled to the means for executing programs by way of means communication (see figure 1); and

wherein the means for reproducing senses presence of a person, and plays advertisements stored in the means for reproducing previously supplied by the means for executing (see paragraph 19). Klayh fails to teach for wirelessly communicating. However, the same rejection applied to claim 19 is also applied to claim 47.

### ***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

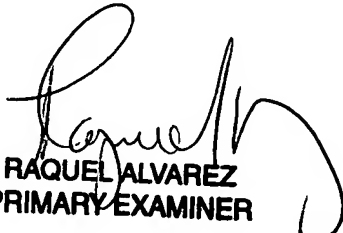
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W. STAMBER can be reached on 571-272-6724. The official Fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DL

Daniel Lastra  
September 4, 2007

  
RAQUEL ALVAREZ  
PRIMARY EXAMINER